DOCKET FILE COPY ORIGINAL

ORIGINAL

RECEIVED

AUG 18 1997

FEDERAL COMMUNICATIONS COMMISSION
OFFICE OF THE SECRETARY

Before the
FEDERAL COMMUNICATIONS COMMISSION
Washington, D.C. 20554

In the Matter of	)	
	)	
Access Charge Reform	)	CC Docket No. 96-262
	)	
Price Cap Performance Review for Local Exchange Carriers	)	CC Docket No. 94-1
	)	
Transport Rate Structure and Pricing	)	CC Docket No. 91-213
	)	
End User Common Line Charges	)	CC Docket No. 95-72

AT&T OPPOSITION TO PETITIONS FOR RECONSIDERATION

Mark C. Rosenblum
Peter H. Jacoby
Judy Sello

Room 3245I1
295 North Maple Avenue
Basking Ridge, NJ 07920
(908) 221-8984

Gene C. Schaerr
James P. Young

1722 Eye Street, N.W.
Washington, D.C. 20006
(202) 736-8141

August 18, 1997

TABLE OF CONTENTS

SUMMARY

The petitions for reconsideration focus broadly on four areas of the Commission's *Access Reform Order*: (1) the transport rate structure; (2) the establishment of presubscribed interexchange carrier charges ("PICCs"); (3) access charge reductions to account for universal service subsidies; and (4) the application of access charges to unbundled network elements. With one exception -- WorldCom's suggestion that the Commission forbear from enforcing geographic averaging of interexchange rates with respect to PICCs -- the arguments in the petitions are meritless.

Transport Rate Structure. The challenges by several interexchange carriers ("IXCs") and IXC groups to the Commission's new transport rate structure should all be rejected. First, the Commission's decision to eliminate the so-called "unitary" rate structure option was entirely correct. The unitary rate structure is not cost-based, because it does not include flat-rated charges to compensate the LEC for the establishment of a dedicated circuit from the serving wire center to the tandem. Moreover, the Commission correctly determined that the three-part transport rate structure should be distance-sensitive with respect to its constituent parts, in order to encourage efficient decisions concerning deployment of facilities and routing of traffic.

Second, the Commission properly required LECs to reallocate (over a three year transition period) most of the tandem-switching costs that are currently recovered in the transport interconnection charge ("TIC") to the tandem-switching charge. Such a reallocation is necessary to make the tandem-switching charge cost-based, and is consistent with the Commission's general determination that access charges should not be immediately

reinitialized at forward-looking cost. Third, the Commission's allocation of overhead loading costs to the tandem-switching charge is appropriate.

PICCs. A number of IXCs also challenge the new multiline business PICCs as excessive. The Commission's decision to impose higher multiline business PICCs for a transitional period was not improper, and as the Commission found, any adverse impacts on particular IXCs will be temporary.

USTA's claim that multiline business PICCs should be adjusted to reflect trunk equivalency as between Centrex customers and PBX users is flawed and should also be rejected. WorldCom is correct, however, that the Commission should forbear from enforcing the geographic deaveraging rules with respect to PICCs.

Universal Service Subsidies. PRTC's argument that universal service subsidies should not be used to offset interstate access revenue requirements is based on a fundamental misunderstanding of the access charge and universal service regimes and should be rejected. Likewise meritless is USTA's claim that existing universal service support based on embedded costs should continue to be reflected in access charges for non-rural LECs after January 1, 1999. USTA's further claim, however, that the effects of the X-Factor should be netted out insofar as the LECs are recovering universal service subsidies through interstate access charges is best addressed by establishing a mandatory end-user surcharge for collection of all universal service support. In the event that a retail surcharge is not adopted, however, there should be *quarterly* exogenous adjustments to price caps to reflect the quarterly changes in the LECs' universal service support obligations, and the flowback

should be recovered through the SLC and a new rate element in the Common Line basket.

Unbundled Network Elements. Finally, the rural LECs' claims that the failure to impose access charges on unbundled network elements would effect a taking are baseless and should be rejected. Any other special considerations that may apply to rural LECs should be addressed in the Commission's separate rulemaking concerning access reform for rural LECs. ALTS's argument that incumbent LECs should be permitted to assess the TIC on the provision of unbundled local transport should also be rejected.

Before the
FEDERAL COMMUNICATIONS COMMISSION
Washington, D.C. 20554

In the Matter of	)	
	)	
Access Charge Reform	)	CC Docket No. 96-262
	)	
Price Cap Performance Review for Local Exchange Carriers	)	CC Docket No. 94-1
	)	
Transport Rate Structure and Pricing	)	CC Docket No. 91-213
	)	
End User Common Line Charges	)	CC Docket No. 95-72

AT&T OPPOSITION TO PETITIONS FOR RECONSIDERATION

Pursuant to Section 1.429 of the Commission's Rules, 47 C.F.R. § 1.429, and its Public Notice dated July 29, 1997 and published in the Federal Register on August 1, 1997 (62 Fed. Reg. 41386), AT&T Corp. ("AT&T") hereby responds to other parties' petitions for reconsideration of the *Access Reform Order*.[1] By separate pleading filed today, AT&T also responds to petitions for reconsideration of the May 8, 1997 *Universal Service Order*.[2]

---

[1] *Access Charge Reform*, CC Docket Nos. 96-262, 94-1, 91-213, 95-72, First Report and Order, FCC 97-158, released May 16, 1997, and published in the Federal Register on June 11, 1997 (62 Fed. Reg. 31868), *pets. for review pending sub nom. Southwestern Bell Tel. Co.* v. *FCC*, Nos. 97-2618 et al. (8th Cir.) (*Access Reform Order* or *Order*); *id.*, Order on Reconsideration, FCC 97-247, released July 10, 1997. Appendix A lists the parties filing petitions and the abbreviations used to identify them herein.

[2] *Federal-State Joint Board on Universal Service*, CC Docket No. 96-45, Report and Order, FCC 97-157, released May 8, 1997, and published in the Federal Register on June 17, 1997 (62 Fed. Reg. 32862), *pets. for review pending sub nom. Texas Office of Public Utility Counsel* v. *FCC*, Nos. 97-60421 et al. (5th Cir.) (*Universal Service Order*); *id.*, Order on Reconsideration, FCC 97-246, released July 10, 1997; *id.*, Second Order on Reconsideration, FCC 97-253, released July 18, 1997.

The petitions for reconsideration focus broadly on four areas of the Commission's *Access Reform Order*: (1) the transport rate structure; (2) the establishment of presubscribed interexchange carrier charges ("PICCs"); (3) access charge reductions to account for universal service subsidies; and (4) the application of access charges to unbundled network elements. As shown below, these petitions are largely baseless and should be rejected. The one exception is WorldCom's suggestion that the Commission forbear from enforcing geographic averaging requirements against interexchange carriers with respect to multiline PICCs.

I. THE COMMISSION SHOULD RETAIN THE CHANGES TO THE TANDEM-SWITCHED TRANSPORT RATE STRUCTURE ADOPTED IN THE ORDER.

The Commission adopted a number of changes to the rate structure for tandem-switched transport. Petitioners attack a number of these changes, but they focus on three in particular: (1) the elimination of the unitary rate structure option; (2) the reallocation of tandem-switching costs from the transport interconnection charge ("TIC") to the tandem-switching charge; and (3) the method of assigning overhead loading costs to the tandem-switching rate. The Commission addressed and fully disposed of all of these objections in the *Order*, and they should be rejected again here.

A. The Commission Properly Decided To Eliminate The Unitary Rate Option.

The Commission's interim rate structure for tandem-switched transport included two options, known as the "unitary rate structure" and the "three-part rate structure."[3] To comply with the D.C. Circuit's *CompTel* decision, the Commission decided to eliminate the unitary rate structure option.[4] Petitioners' objections to this change boil down to two principal arguments, neither of which has merit.

First, several Petitioners argue that the Commission erred in determining that the three-part rate structure more accurately reflects the manner in which tandem-switched transport costs are incurred, and as a result the Commission's rules discriminate in favor of direct-trunked transport customers. The Commission thoroughly refuted these claims in the *Order*.[5] Indeed, none of the Petitioners disputes the key finding underlying the Commission's conclusion on this point, namely, that tandem-switched transport consists of a dedicated transport link from the serving wire center to the tandem *and* a common transport link from the tandem to the end office.[6] Nor do they dispute that the costs of the dedicated links are non-traffic-sensitive, and the costs of the common transport are traffic-sensitive. Therefore,

---

[3] *See Order*, ¶ 159.

[4] *Order*, ¶ 175; *Competitive Telecommunications Ass'n* v. *FCC*, 87 F.3d 522 (D.C. Cir. 1996) ("*CompTel*").

[5] *Order*, ¶¶ 178, 182, 185-86.

[6] *See* CompTel at 19 ("it is true that long distance carriers ordering tandem-switched transport are effectively requiring ILECs to route their traffic through the tandem location"); Telco at 5-6 ("the only difference is that the circuits utilized for direct-trunked transport are all dedicated while at least one of the circuits utilized for tandem-switched transport customers is shared"); *see also* WorldCom at 13.

to comply with principles of cost-causation, these two components of tandem-switched transport must be unbundled into separate charges. The unitary rate structure does not capture these differences, and indeed encourages inefficient arrangements by requiring the local exchange carriers ("LECs") to provide "dedicated transport links with NTS costs on the serving wire center-to-tandem route with no assurance that the traffic-sensitive, per-minute revenues collected will cover the NTS costs of the link." *Order*, ¶ 177.

Despite this unassailable logic, Petitioners assert that LECs sometimes route direct-trunked transport through the tandem along the same routes that tandem-switched transport is routed, and therefore it is appropriate to bill tandem-switched transport on a "unitary" (*i.e.*, end-to-end) basis just as direct-trunked transport is.[7] This analogy to direct-trunked transport is inapposite, however. With respect to direct-trunked transport, purchasers of that form of transport are paying a flat rate that compensates the LEC for the cost of establishing a dedicated channel from the serving wire center all the way to the end office. Therefore, even if a LEC may choose in particular circumstances to route certain direct-trunked traffic along differing routes, the fact remains that the LEC has incurred the cost of (and the access purchaser has fully paid for) the establishment of a channel that the LEC cannot use for other purposes.

By contrast, purchasers of tandem-switched transport *require* the LEC to incur the cost of establishing *both* a dedicated transport link (between the serving wire center and the tandem) and a common transport link. The per-minute, "unitary" transport charge does not

---

[7] CompTel at 18-19; Frontier at 4-5; KLP at 9; Telco at 5-6; TRA at 14-16; USLD at 6; WorldCom at 11-14.

compensate the LEC for these costs, because carriers with smaller amounts of traffic may not generate enough minutes of use to cover the LEC's cost of establishing the dedicated link. Moreover, because the LEC cannot use that dedicated link for other purposes, it has no other source for recouping those costs.

Second, Petitioners erroneously attack the Commission's determination that the three-part rate structure should be distance-sensitive with respect to both the dedicated and common links -- *i.e.*, that the rates should reflect airline mileage along the dedicated route (from the serving wire center to the tandem) and along the shared route (from the tandem to the end office).[8] The Commission correctly rejected Petitioners' claims in the *Order*.[9] Distance-sensitive rates for the component parts of tandem-switched transport are consistent with principles of cost-causation and, indeed, are necessary to encourage efficient deployment of facilities. Under the unitary rate structure -- which was based on airline mileage from the serving wire center to the end office -- interexchange carriers ("IXCs") could locate their POPs without any regard to the cost of the dedicated transport (between the serving wire center and the tandem) they were imposing on the LECs. Such a departure from cost-causation principles, however, would not only be inconsistent with the D.C. Circuit's *CompTel* decision, but (as the Commission noted) it would inhibit competitive entry, because new entrants could not compete with the existing subsidized arrangements.

---

[8] CompTel at 19-20; Excel at 7-9; RCN at 6; TRA at 16; WorldCom at 14.

[9] *Order*, ¶¶ 183-84, 187-89.

Moreover, contrary to the claims of some Petitioners, the configuration of the IXCs' networks is within the control of the IXCs themselves, not the ILECs.[10] The incumbent LECs have no incentive to manipulate the location of tandem switches for the purpose of increasing distance-sensitive tandem-switched transport charges. This is because tandem switches also carry large amounts of LEC local and toll traffic. By contrast, the IXCs can substantially reduce their tandem-switched transport rates by establishing their POPs in more efficient locations or by switching to direct-trunked transport where warranted. Indeed, the Commission has made this even easier to do by requiring the LECs to waive for an interim period certain nonrecurring charges associated with converting to direct-trunked transport. Therefore, distance-sensitive rates should not leave the IXCs at the mercy of the ILECs' deployment decisions.[11]

In that regard, Petitioners' argument that distance-sensitive rates will give larger carriers like AT&T an artificial advantage ignores half of the equation.[12] Carriers like AT&T have previously made extensive investments in their own networks, and it is those investments that have enabled them in some circumstances to pay lower access charges to the ILECs. The smaller IXCs, by contrast, generally have chosen to obtain those same services and facilities from the ILECs -- through the purchase of tandem-switched access at "unitary" per-minute rates -- rather than by providing such services and facilities through

---

[10] CompTel at 19-20; Frontier at 5-6; KLP at 9; TRA at 16; USLD at 4; WorldCom at 15-16.

[11] The *Order* also permits LECs to reduce or eliminate the distance-sensitive nature of tandem-switched transport charges. *Order*, ¶ 190.

[12] *E.g.*, WorldCom at 17.

investment in their own networks. Until now, however, the unitary rate structure has permitted these IXCs to obtain such transport services without investing in their own networks *or* fully compensating the ILECs for theirs. The Commission properly found that such subsidies are no longer justified and should come to an end.[13]

In sum, as the Commission noted, "IXCs have now had well over a decade since divestiture" to prepare "for a fully cost-based transport rate structure." *Order*, ¶ 178. In light of that long period of preparation, the Commission properly concluded that tandem-switched transport should no longer be subsidized.

B. The Commission Should Reaffirm Its Rule Requiring Tandem-Switching Costs To Be Reallocated To the Tandem-Switching Charge.

The interim transport rate structure allocated only 20 percent of the tandem-switching revenue requirement to the tandem-switching charge. In response to the D.C. Circuit's remand in the *CompTel* case, the Commission has correctly decided to require the LECs to reallocate most of the remaining 80 percent of the tandem-switching revenue requirement to the tandem-switching charge.[14] Petitioners mount two attacks on these changes, but both are baseless.

---

[13] WorldCom's additional argument that the Commission should have maintained the interim rules to the extent that tandem-switched transport is based on an assumption of 9000 minutes of use per voice grade circuit should also be rejected. WorldCom at 8-10. As the Commission explained, the interim rule was adopted solely for administrative convenience, is not cost-based, and is now inconsistent with the pro-competitive purposes of the 1996 Act. *Order*, ¶ 207. The change to actual minutes of use is thus entirely proper.

[14] *See Order*, ¶¶ 196-99.

First, some IXCs claim that the reallocation will result in rate shock, but these claims are both speculative and dubious.[15] The reallocation is to be phased in over three years: the remaining tandem-switching costs will not be fully reallocated to the tandem-switching charge until January 1, 2000.[16] The *Order* thus puts all IXCs on notice of the changes two and a half years in advance of their full effects, and IXCs should have sufficient time to adjust to the new cost-based pricing structure. Moreover, everyone has understood from the beginning that the current transport rate structure was merely an *interim* structure. Thus, all IXCs have effectively been on notice for years prior to the *Order* (and certainly since the D.C. Circuit's *CompTel* decision) that the current subsidized tandem-switching rates would not continue forever.

Second, some Petitioners argue that the current tandem-switching rates reflect true forward-looking costs, and that the reallocation is therefore unnecessary.[17] The Commission properly concluded, however, that tandem-switching charges should not be treated differently from the rest of the access charge regime. Indeed, many parties to the *Access Reform* proceeding, including AT&T, urged the Commission to adopt forward-looking costs as the standard for *all* access charges. The Commission declined to do so; instead, it left in place the existing regime, which is based on embedded costs, with the hope that competitive entry would bring access charges to their true costs. Consistent with that decision, all

---

[15] CompTel at 9-10; KLP at 9.

[16] *Order*, ¶ 198.

[17] CompTel at 8-9; Frontier at 11-12; USLD at 4.

tandem-switching costs must be reallocated to the tandem-switching charge, so that all access charge rate elements are based on the same measure of cost (thereby avoiding outdated subsidies and non-cost-based distortions within the interexchange market).[18] Indeed, the available evidence indicates that the direct-trunked transport charges are also considerably above cost.[19]

C. The Commission Properly Allocated Overhead Loading Costs To The Tandem-Switching Charge.

Several Petitioners repeat their baseless arguments that the Commission's rules overallocate overhead loading costs to the tandem-switching charge.[20] The D.C. Circuit remanded this issue to the Commission for a fuller explanation of that policy, and the Order adequately supplies the necessary explanation. *Order*, ¶¶ 200-05.

The Commission's rules require overhead to be allocated to various categories in the same proportion that interstate direct investment is allocated to those categories.[21] For these purposes, the Commission has grouped tandem-switching with local switching in the Central Office Equipment category, while direct-trunked transport is grouped with other transmission services (like special access and tandem-switched transport) in the Cable Carrier and Wire

---

[18] *See Order*, ¶ 199.

[19] For instance, data submitted by the LECs in Docket 93-162 during the period March-June 1994 indicated that rates for their DS1 and DS3 special access services are generally several times as much as the corresponding direct costs.

[20] CompTel at 12-15; WorldCom at 4-5.

[21] 47 C.F.R. §§ 69.309, 69.411.

Facilities category.[22] The allocation of overhead to these categories in the same proportion as direct investment is an eminently reasonable policy, given that overhead cannot readily be assigned to particular facilities or services,[23] and Petitioners have offered no reason to depart from that allocation here. Moreover, tandem-switching is properly grouped with local switching, because "[t]he direct costs of both kinds of switching are fundamentally the same in that both types of switches are comprised of ports and a switching matrix." *Order*, ¶ 203. Purchasers of direct-trunked transport, by contrast, do not make use of tandem-switching functionality, and therefore should not have to bear the relatively higher proportion of overhead allocated to the switching categories.

II. THE COMMISSION SHOULD GENERALLY REAFFIRM ITS RULES CONCERNING PRESUBSCRIBED INTEREXCHANGE CARRIER CHARGES, EXCEPT THAT IT SHOULD PERMIT INTEREXCHANGE CARRIERS TO GEOGRAPHICALLY DEAVERAGE RATES.

In addition to their attacks on the new transport rate structure, Petitioners also complain about several aspects of the new presubscribed interexchange carrier charges. With the exception of WorldCom's discussion of geographic averaging, all of these contentions should be rejected.

---

[22] 47 C.F.R. §§ 69.305, 69.306.

[23] *See* CompTel at 15 n.9 ("CompTel recognizes that the FCC does not have sufficient record data to reallocate overhead revenues accurately and efficiently among the transport rate elements").

A. Given That The Commission Did Not Adopt Cost-Based Access Charges, The Commission Should Not Adjust The Multiline Business PICC.

Various Petitioners seek reconsideration of the Commission's decision to permit PICCs for multiline businesses to be relatively higher initially than residential and single-line business PICCs.[24] These claims should be rejected for several reasons.

As an initial matter, it should be noted that AT&T shares the concerns of these Petitioners with respect to the relatively high *level* of the multiline business PICC. AT&T, along with many other parties to the *Access Reform* proceeding, argued that all access charges should be set at forward-looking economic cost. If the Commission had adopted that approach, there would have been no need to establish such excessively high multiline business PICCs. Thus, the petitions for reconsideration are simply another reminder that access charges should be reduced to cost-based levels as soon as possible.[25]

Notwithstanding these concerns over the general rate levels, however, the petitions should be denied. Unlike its predecessor, the per-minute carrier common line charge

---

[24] CompTel at 2-6; KLP at 2-8; TRA at 6-12; USLD at 2-3.

[25] The relatively high level of the multiline business PICC also flows from the Commission's decisions concerning loop costs for residential and single-line businesses. The Federal-State Joint Board on Universal Service found that increasing the SLC for primary residential and single-line business customers could make telephone service unaffordable for a significant number of consumers, and therefore the Commission declined to do so. Moreover, the Commission found that the new flat-rated PICC for primary residential and single-line businesses should not be set immediately at levels high enough to permit full recovery of common line revenues, because the Commission thought that such a transition was necessary to give IXCs adequate time to adjust to the new rate structure. Whether or not these judgments were correct, the result is yet a further departure from cost-based rates: a system in which the combination of SLCs and PICCs for residential and single-line businesses are artificially low, creating the need for higher multiline business PICCs as a cross-subsidy.

("CCLC"), the PICC is a flat-rated charge assessed on a per-line basis to recover a non-traffic-sensitive cost. As such, it is more consistent with principles of cost-causation than the CCLC (assuming that IXCs are permitted to deaverage rates, as discussed in Section II.C, infra).[26] The per-line PICC also has the added, pro-competitive benefit of encouraging more broad-based entry into the local market, by reducing the relative attractiveness of targeting only the incumbent LECs' highest volume customers -- an anomaly that had been artificially created by the usage-based CCLC. *Order*, ¶ 75.

To the extent that the shift to cost-causative per-line charges will have an adverse impact on certain IXCs, those effects will be temporary, as the Commission found. "[T]he actual PICC imposed on multi-line business lines will, on average, decrease from 1998 to 1999, and for every year thereafter, and will fall to less than $1.00 by 2001." *Order*, ¶ 59. For these reasons, Petitioners' argument should be rejected.

B. The Commission Should Not Permit Adjustments To The Multiline Business PICCs To Reflect Trunk Equivalency Between Centrex Users And PBX Arrangements.

USTA notes that, because the multiline business PICCs are to be assessed on a per-line basis, a Centrex customer will generate more multiline PICCs than will a PBX customer with the same number of extensions. From this fact, however, USTA incorrectly argues that the Commission should modify its rules to permit LECs to "reflect trunk equivalency" when

---

[26] The flat-rated PICC, while more cost-causative than the CCLC, is still inferior to a flat-rated charge assessed directly on the end-user, as AT&T and many others showed in the *Access Reform* proceeding.

calculating PICCs on Centrex service or to assess the PICC on Network Access Registers instead of on station lines.[27]

To the contrary, as USTA's own pleading demonstrates, the differing treatment is directly related to the relative costs of providing the two services. Centrex service "usually requires a loop facility from the central office to the customer's location for each working Centrex telephone number." USTA at 2. That is not true of PBX arrangements: "PBX arrangements are not directly supported by the central office switch," and PBX customers are able to "concentrate usage from multiple lines to a few trunks." *Id.* Moreover, PBX customers have made other investments that Centrex customers have not. "PBX arrangements require the customer to obtain and provide space for PBX switches at the customer's premises," and the customer "assumes responsibility for maintaining or obtaining maintenance support for this equipment." USTA at 2-3.

Therefore, the disparity between Centrex and PBX arrangements is consistent with principles of cost-causation, because Centrex in fact uses more of the LEC's lines than a PBX arrangement does. Moreover, there is no reason to believe that such disparities will result in competitive disadvantages for the incumbent LECs. Historically, the LECs have offset the federally imposed SLC in the intrastate jurisdiction by providing "credits" on customers' Centrex bills, and there is no reason to think they could not provide similar credits to offset the new multiline business PICCs. Therefore, USTA's claims should be rejected.

---

[27] USTA at 2-4.

C. The Commission Should Permit IXCs To Geographically Deaverage Rates To Reflect Differences In PICCs.

Numerous parties to the *Access Reform* proceeding, including WorldCom, Sprint, and AT&T, argued that if the Commission established a flat-rated PICC to replace the CCLC, the Commission should forbear under Section 10 from enforcing Section 254(g)'s geographic averaging rules with respect to PICCs.[28] As WorldCom points out, the Commission's *Order* did not adequately address these arguments,[29] and AT&T agrees that the Commission should revisit the issue.

PICCs will vary across the country because of differing loop costs. National IXCs, however, will be forced to average these disparate PICCs into a single national rate, which can be readily undercut by regional IXCs in lower cost areas. These variances between regional and nationally averaged rates will create distortions within the interexchange market in both low and high cost areas that will hinder competition and are not in the public interest. Thus, as these parties have previously shown, Section 10's standards for forbearance are fully satisfied here; indeed, forbearance is necessary to protect consumers from cross-subsidizing other customers in higher cost areas.[30] The Commission brushed these concerns aside with the simple assertion that customers in higher cost areas might pay higher long distance rates with forbearance (*Order*, ¶ 97); but the Commission did not address the distortional impact

---

[28] *See* AT&T Reply Comments at 29 n.82; WorldCom Comments at 34-36; Sprint Comments at 14-16.

[29] WorldCom at 22-23.

[30] *See, e.g.*, WorldCom Comments at 34-36.

on competition (in both low and high cost areas). For these reasons, the Commission should now permit deaveraging of PICCs pursuant to Section 10.

III. UNIVERSAL SERVICE SUBSIDIES MUST BE FULLY DEDUCTED FROM ACCESS CHARGES.

A few Petitioners raise concerns that relate to the interaction of the universal service system with the access charge regime, but none of their arguments has merit.

First, PRTC errs in arguing that the Commission should reconsider its *Order* insofar as it requires LECs that receive universal service support from the new universal service fund to use such support to reduce or satisfy that carrier's interstate access revenue requirement. *Order*, ¶ 381. PRTC thinks such a rule targets all federal universal service support at interexchange services, in violation of Section 254 and of the Commission's own stated goals in the *Universal Service Order*.[31]

PRTC is confusing the targets of universal service support with the sources of universal service support. Under the current system, interstate access charges are set substantially above cost and constitute a *source* of universal service subsidies. As the new universal service fund is established, and carriers begin to receive that support from the fund, there must be corresponding reductions in the interstate access revenue requirement in order to avoid double recovery. The subsidies from the universal service fund, however, will unquestionably support the set of services the Commission has included in the definition of universal service, which are primarily local services. PRTC's claims are therefore baseless.

---

[31] PRTC at 3-7.

USTA makes a similar suggestion that is likewise meritless. USTA asks the Commission to permit non-rural LECs to increase interstate access charges by an amount necessary to compensate them for what it calls "unrecovered intrastate loop costs" starting on January 1, 1999. Under USTA's proposal, access charges would be reduced by the amount of the new universal service subsidies but an offsetting increase would be permitted for whatever Part 36 interstate high cost support the LEC received as of December 31, 1998 (to be phased out within five years). USTA at 9-10.

USTA's suggestion should be rejected. Under the new universal service system, the Commission will conduct forward-looking cost studies that identify with particularity the full amount of the subsidies that are necessary to preserve universal service. Those subsidies will be collected and disbursed beginning January 1, 1999, and the LECs must make a corresponding reduction in access charges at that time. By contrast, the separate reductions in access charges that will result from the elimination of 47 C.F.R. § 36.601(c) (the universal service expense adjustment) are not based on such forward-looking cost studies and simply represent excess access charges. Allowing a further offset for such amounts would be inconsistent with the Commission's calculation of the full subsidy requirements as of January 1, 1999. Indeed, USTA has not even attempted to demonstrate that such additional amounts will be necessary to provide subsidized local service after January 1, 1999, and the Commission cannot simply *assume* that such additional subsidies have any continuing validity after the Commission conducts the cost proceedings that will underlie the new universal service system to be implemented on that date.

Finally, USTA argues that the exogenous adjustments to the LECs' price caps for the recovery of universal service contributions should be insulated from yearly productivity (or "X-Factor") adjustments. USTA at 5-6. The far superior solution to USTA's concern would be to adopt a mandatory end-user surcharge for the recovery of all universal service contributions.[32] Nonetheless, if the Commission elects not to adopt the retail surcharge, it should (1) require the LECs to make *quarterly* exogenous adjustments to their price cap indices that reflect the quarterly adjustments to the LECs' universal service contributions, (2) allow the LEC flowback that is assigned to the Common Line basket to be recovered from end-users via the SLC to the extent that the actual SLC rates in a study area are below the SLC caps, and (3) require that any remaining amount be recovered through a new separate rate element in the Common Line basket. Establishing a new rate element is necessary to facilitate an accurate accounting to ensure that the LECs recover only that which they are obligated to contribute to the support of universal service (*i.e.*, only those amounts recovered under the SLC and the new rate element). This combination would obviate the need to protect USF contributions from X-Factor productivity adjustments.[33]

---

[32] *See* AT&T at 5-7; U S WEST Reconsideration Petition, CC Docket No. 96-45, at 10.

[33] In all events, USTA's own proposal (simply making an exogenous adjustment to net out the effect of the X-Factor) must be rejected because it fails to take into account the effect of growth in demand volumes on the amount of revenue collected for USF purposes. Indeed, USTA's example (in footnote 3) is misleading, because it does not include growth in volumes from the base period to the tariff period, which results in actual revenues exceeding the "allowed revenues" shown in the example by the amount of such growth. In most cases, the effect of demand growth will more than offset the effect of the productivity factor, and therefore LECs are more likely to *overrecover* rather than underrecover their USF obligation even if the X-Factor is applied. Thus, USTA's proposal to exclude the effect of the X-Factor (continued...)

IV. THE COMMISSION SHOULD REAFFIRM THAT ACCESS CHARGES CANNOT BE ASSESSED ON THE PURCHASE OF UNBUNDLED NETWORK ELEMENTS.

Finally, RTC and Rural Tel. both argue that the Commission's decision to prohibit ILECs from assessing interstate access charges on IXCs that are purchasing unbundled network elements ("UNEs") is unlawful and even unconstitutional under the Fifth Amendment,[34] and ALTS argues that incumbent LECs may charge the TIC on unbundled transport.[35] These arguments are meritless.

With respect to the claims of the rural LECs, the Takings Clause has never been held to guarantee regulated entities a particular rate of return, and certainly does not guarantee all utilities an 11.25 percent rate of return, as Rural Tel. seems to be suggesting. *See Duquesne Light Co.* v. *Barasch*, 488 U.S. 299 (1989); *Market Street Railway Co.* v. *Railroad Commission of California*, 324 U.S. 548, 567 (1945); *Illinois Bell Tel. Co.* v. *FCC*, 988 F.2d 1254, 1263 (D.C. Cir. 1993). A rate order is not unconstitutional unless, taken as a whole, it threatens the financial viability of the firm. *Duquesne*, 488 U.S. at 312. None of the Petitioners has even attempted to make the necessary showing, and therefore the constitutional claims should be rejected.[36]

---

[33] (...continued)
would only increase the extent of that overrecovery.

[34] *See Order*, ¶¶ 336-40; RTC at 8-21; Rural Tel. at 3-15.

[35] Letter from Richard J. Metzger (ALTS) to A. Richard Metzger (FCC), dated August 13, 1997 (ex parte).

[36] To the extent that these Petitioners are arguing that as a matter of law UNE rates cannot (continued...)

Moreover, these claims are especially speculative because both of these Petitioners consist of rural telephone companies that are exempted from the duty to offer UNEs under Section 251(f). Indeed, neither Petitioner asserts that any of its members currently offers UNEs, but only that the Commission's *Order* will increase the incentive for other carriers to seek to remove the exemptions.[37] Because no state commission has lifted these exemptions for any of these LECs, they could not possibly offer any concrete evidence concerning either the rates at which they offer UNEs or the possible financial impact of the loss of access revenues.

In all events, the Commission has indicated that it will consider access reform for rural companies separately in a subsequent rulemaking. *Order*, ¶¶ 330-35. Therefore, if these Petitioners feel that special relief is warranted for rural LECs with respect to access charge reform, the subsequent rulemaking is likely the more appropriate forum for consideration of such claims.

As to ALTS's claims, ALTS simply misreads 47 C.F.R. § 69.155(c) as to the application of the TIC. The rule clearly applies only to "the local exchange carrier's local transport *service*" (emphasis added). An unbundled network element, such as transport, is not a "service;" it is a facility. Indeed, when a new entrant obtains use of the ILEC's

---

[36] (...continued)
apply when UNEs are used to provide interstate access, the Eighth Circuit has rejected that argument and has upheld the Commission's rule prohibiting the assessment of interstate access charges on the provision of UNEs. *Iowa Utils. Bd.* v. *FCC*, Nos. 96-3321 et al., slip op. at 153 n.39 (8th Cir, July 18, 1997).

[37] *See, e.g.*, Rural Tel. at 2-3.

unbundled transport facilities to provide its own services (including access services), it is a competitive provider no less than traditional competitive access providers that build their own facilities. ALTS's contrary interpretation would have serious detrimental impacts on competitive entry through UNEs and should be rejected.

CONCLUSION

To the extent and for the reasons stated above, the Commission should reconsider and clarify the *Access Reform Order*.

Respectfully submitted,

Mark C. Rosenblum
Peter H. Jacoby
Judy Sello

Room 3245I1
295 North Maple Avenue
Basking Ridge, NJ 07920
(908) 221-8984

Gene C. Schaerr
James P. Young

1722 Eye Street, N.W.
Washington, D.C. 20006
(202) 736-8141

August 18, 1997